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Church and State

IN THE

United States of America,

Theory and Practice.

A Paper for the Australasian Catholic Congress,
Held in Sydney, Australia, in the year 1900,

BY

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CHURCH AND STATE IN THE UNITED STATES OF AMERICA--THEORY AND PRACTICE.

In the United States of America the relations between church and state are peculiar. They are the outcome of circumstances. It is well known that the American colonies before their separation from England had each its established protestant worship, some in plain terms designating a state church, others establishing a protestant service by directly or indirectly excluding catholics. Even Maryland, originally a catholic colony, had suffered a change, first in 1655 through the Puritans, then when William and Mary established the Anglican church and disfranchised catholics.

The colonies, according to their foundation, had a provincial, a proprietary or a charter government. They all, however, were similar in that each had a governor, a council which constituted the upper house of the legislature, and a lower house elected by the people. Familiarity with elections and with legislative proceedings was a necessary consequence. Hence when the authority of the king was thrown off the people were prepared to replace at once such portions of the government as were removed by that

act. Hence too there was no inter-regnum, no anarchy.

Although the colonies were separate and independent of each other, still their common relation to the crown was a bond of union. And precisely because they were subjects of the English crown the colonists insisted that they could not be taxed without their consent, that taxes must be laid by the colonial assemblies. The denial of the power of taxation to parliament soon led to the denial of all power to legislate for the colonies. Allegiance to the crown was admitted; subjection to parliament denied.

On the other hand parliament claimed and proceeded to exercise supreme power over the colonies by passing a stamp act, which was soon repealed, and by imposing duties on articles imported. Remonstrances and appeals to the king and parliament being without effect, Massachusetts recommended the assembling of a Continental Congress to deliberate on the state of affairs. Each of the thirteen colonies, except Georgia, sent delegates, chosen either by the lower houses of the legislatures or by conventions of the people. The congress met in Philadelphia, on September 4, 1774, and adopted a declaration of rights and addresses to the king, to the people of England and to the neighboring colonies, variously setting forth their grievances and claims for redress. The desired end not being attained, another congress assembled on May 10, 1775.

Meantime war had broken out, and protests against grievances gave way to declarations of independence. On the second day of July, 1776, the congress unanimously declared that "These United Colonies are, and of right ought to be, free and in-

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dependent states; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved." This was the real declaration of independence, to which the several colonies, when the matter was referred to them by the congress, had previously consented, except New York, which soon acquiesced. However, two days later a statement of the reasons for establishing an independent government, after much debate, was passed, ordered printed and published to the people of the colonies and the world.

This declaration begins thus: "When in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness."

Some in opposition to the framers of this document may not hold these statements to be self-evident truths. Others may consider them ambiguous expressions. For the purpose of this paper it is only necessary to state that the members of the Continental Congress who promulgated the document may be considered therein doctors of law but not makers of it. This declaration is not basic law in the United States of America. It is a valuable statement, a time-honored treasure of our forefathers, a powerful summary of their grievances, and an epitome of Jeffersonian philosophy. Citizens of America are never required to profess faith in this statement of the reasons for independence; but without exception they are required to accept and support the constitution of the United States and of the state in which they live.

The Continental Congress of 1776 had no coercive power; it was not authoritative but rather deliberative, and depended entirely on the several colonies for the execution of its plans. It could make no laws, but only execute the instructions of the colonies. In passing the resolution of independence on July second its delegates followed the instructions of the colonies and made law for each of them and all their citizens. But in setting forth the reasons on July fourth they published the thoughts uppermost in mind "because of a decent respect to the opinions of mankind." Throughout the land the statement was exceedingly well received, for in many places it but rehearsed resolutions already passed. It has been accepted as the underlying policy of the American nation.

The colonies were still independent of each other

and remained so until March, 1789, when the present constitution of the United States of America became by specific consent of each colony, except North Carolina and Rhode Island, "the supreme law of the land." These colonies soon acquiesced. Previous to this, from the declaration of independence to March, 1781, the Continental Congress assumed to make regulations, which were partly accepted, partly ignored, in the ruling of the country and especially of the army. For eight years, from 1781 to 1789, the United States were a confederation, which was a league of friendship but not a national government.

Meanwhile the several states adopted constitutions; but only in Pennsylvania, Delaware, Maryland and Virginia were the penal laws against catholics swept away and professors of the true faith admitted to all rights of citizenship.

The constitution of North Carolina, passed in 1776, in section 32, says: "No person who shall deny the truth of the protestant religion shall be capable of holding any office or place of trust or profit in the civil department within the state."

The constitution of South Carolina, passed in 1778, in articles 12 and 13, says: "No person shall be eligible to a seat in the senate" or "to sit in the house of representatives unless he be of the protestant religion." "The christian protestant shall be deemed and is hereby constituted and declared to be the religion of this state; and all denominations of christian protestants in this state demeaning themselves peaceably and faithfully shall enjoy equal civil and religious privileges."

New Jersey, in article 19 of its constitution,

adopted in 1776, enacted that "no protestant inhabitant of this colony shall be denied the enjoyment of any civil right merely on account of his religious principles; but that all persons, professing a belief in the faith of any protestant sect, who shall demean themselves peaceably under the government as hereby established, shall be capable of being elected to any office of profit or trust, or being a member of either branch of the legislature."

The constitution of Massachusetts, passed in 1779, practically established Congregationalism and authorized towns to lay taxes "for the institution of the public worship of God and for the support and maintenance of public protestant teachers of piety, religion and morality in all cases where such provision shall not be made voluntarily."

The New York constitutional convention of 1777 required all persons applying for citizenship to "abjure and renounce all allegiance and subjection to all and every foreign king, prince, potentate and state in all matters ecclesiastical and civil."

The constitution of New Hampshire, adopted in 1792, provided "for the support and maintenance of public protestant teachers" and that "members of the legislature as well as the governor, counselors and senators, shall be of the protestant religion." This clause was not formally repealed until 1877, though for many years by common consent it had been disregarded.

Connecticut continued to use its royal charter until 1818, and its law established Congregationalism as the state religion. Rhode Island likewise used its royal charter until 1848, but rescinded the law which denied toleration to catholics. The constitution of

Delaware, adopted in 1776, required "an oath of belief in God the Father, Son and Holy Ghost and in the inspiration of the scriptures." Pennsylvania in 1776 required "belief in the inspiration of the old and new testaments, and in a future state of rewards and punishments."

It is evident, therefore, that not only the colonies before independence, but the original states after separation from England, recognized God and professed belief in christianity. There was also an undoubted union between the state and protestantism, belief in which was a necessary requisite for office and for citizenship. Only in Pennsylvania, Delaware, Maryland and Virginia were catholics allowed by law to hold office; but in effect this rarely occurred.

Even the first Continental Congress is emphatically on record against catholics, for on Oct. 14, 1774, it officially alleged as one of its greatest grievances the fact that the king and the parliament of England had passed "an act for establishing the Roman Catholic religion in the province of Quebec."

This "Act for making more effectual provision for the government of the province of Quebec in North America" (12 George III) fixed the limit of the province of Quebec, as formerly, along the western line of Pennsylvania to the Ohio and down that river to the Mississippi, and contained this provision regarding religion: "And for the more perfect security and ease of the minds of the inhabitants of said province, it is hereby declared, That his Majesty's subjects, professing the religion of the church of Rome of and in the said province of Quebec may have, hold and enjoy the free exercise of the

religion of the church of Rome, subject to the King's supremacy, declared and established by an Act made in the first year of the reign of Queen Elizabeth, over all the dominions and countries which then did or thereafter should belong to the imperial crown of this realm; and that the clergy of the said church may hold, receive and enjoy their accustomed dues and rights with respect to such persons only as shall profess the said religion." By this act the catholic church not only in the Canada of to-day, but in the land which now is Ohio, Michigan, Indiana, Illinois, Wisconsin, was declared free from the penalties of the penal laws of England and the colonies, and the parish priests were maintained in all the dues and rights which they enjoyed under the French rule before the conquest of Canada.

The Address to the People of Great Britain issued by the Continental Congress on Sept. 5, 1774, says of this Quebec act: "We think the legislature of Great Britain is not authorized by the constitution to establish a religion fraught with sanguinary and impious tenets, or to erect an arbitrary form of government in any quarter of the globe." This address, replete with such sentiments, in time reached Canada, where it was translated and compared with the other address, couched in diplomatic language, issued by the same congress to the colonists of Canada inviting them to join in the revolution. The effect might have been foreseen. The somewhat favorable feeling which had prevailed for the American colonies disappeared, and Quebec remained loyal to Great Britain.

Bishop Briand of Quebec and his clergy could find no sufficient cause for rebellion. The petition of

the inhabitants of Quebec had been granted by the restoration of former boundaries, civil rights had been accorded as guaranteed in the treaty with France, the church and catholics had been specifically recognized and confirmed in their rights by act of parliament. Sound moral reasons being wanting, the Bishop considered rebellion a grievous crime and inflicted the punishment of excommunication on all who joined therein. In such circumstances it is apparent that the mission of Rev. John Carroll, afterwards the first bishop of Baltimore, who on Feb. 15, 1776, was sent with Benjamin Franklin and Samuel Chase in the name of the Continental Congress to induce the Canadians to join the Americans, could not but be a complete failure.

In the declaration of independence made to the world on July 4, 1776, there is no mention of religious liberty or even toleration for catholics. In fact there is a diplomatic but direct reference to the Quebec Act as one of the grievances against the English king. He is charged with giving his assent to acts of parliament "for abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government and enlarging its boundaries."

Neither does the original constitution of the United States, adopted "as the supreme law of the land" and ratified by the states in 1790, contain any provision concerning religion, except that no religious test oath shall be required as a qualification to any office or trust under the United States. This does not preclude the various states from exacting a test oath for office. The first amendment to the constitution adopted in 1791, says: "Congress shall

make no law respecting an establishment of religion or prohibiting the free exercise thereof;" and the tenth amendment says: "The powers not delegated to the United States by the constitution nor prohibited by it to the states, are reserved to the states respectively, or to the people." Therefore, as Judge Story remarks in his Commentary on the Constitution (Sec. 1879), "the whole power over the subject of religion is left exclusively to the state governments, to be acted upon according to their sense of justice and to the state constitutions."

It is indeed interesting to note the changes which have taken place in the state constitutions within a century. From time to time, usually every twenty years, the constitution of each state is revised and a new one submitted for adoption by vote of the people. Whatever reason may be assigned, whether the increasing number and prominence of catholics soon after the revolution, whether the recognition of American catholics as a tribute of gratitude to France and Spain for assistance in acquiring liberty, whether the influence of Virginia, Maryland, Pennsylvania and Delaware on the other states, it is certain that the legal proscription and persecution of catholics soon fell by the wayside, cut from the constitutions, and overwhelmed by popular vote.

In the revised constitution of North Carolina we read: "All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority should in any case whatever control or interfere with the right of conscience."

South Carolina now says: "No person shall be deprived of the right to worship God according to

the dictates of his own conscience, provided that the liberty of conscience hereby declared shall not justify practices inconsistent with the peace and moral safety of society."

New Jersey to-day says: "No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience."

Massachusetts now declares: "It is the right as well as the duty of all men in society, publicly and at stated seasons, to worship the Supreme Being, the Creator and Preserver of the universe. And no subject shall be hurt, molested or restrained in his person, liberty or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his profession or sentiments, provided he doth not disturb the public peace or obstruct others in their religious worship."

New Hampshire's present constitution says: "Among the natural rights some are in their very nature unalienable. Of this kind are the rights of conscience. Every individual has a natural and inalienable right to worship God according to the dictates of his own conscience and reason."

Connecticut, which formerly had established Congregationalism, now says: "It being the duty of all men to worship the Supreme Being, the great Creator and Preserver of the universe, and their right to render that worship in the mode most consistent with the dictates of their conscience, no person shall by law be compelled to join or support, or be classed with, or associated to, any congregation, church or religious association."

Pennsylvania says: "All men have a natural and

indefeasable right to worship Almighty God according to the dictates of their own consciences."

Maryland says: "As it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty."

The new states which from time to time were admitted to the Union adopted similar provisions in their constitutions.

Ohio says: "All men have a natural and indefeasable right to worship Almighty God according to the dictates of their own conscience."

Kentucky, Maine, Missouri, Nebraska, Tennessee, Texas, Vermont use the same words as Ohio.

Michigan's constitution says: "The legislature shall pass no law to prevent any person from worshipping Almighty God according to the dictates of his own conscience."

California, Florida, Illinois, Nevada, North Dakota, each declare: "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state."

Louisiana declares: "Every person has the natural right to worship God according to the dictates of his conscience."

Thus we see that everywhere throughout the United States protestantism has been disestablished by law, and the constitutions of the original states have been modified to this effect. It is also apparent that the states of the Union are not godless either in their constitutions or their people, for, that God is to be worshipped is decreed by the constitu-

tions and this duty is therein confessed by vote of the people.

The American nation through its states has decreed that God should be worshipped, and at the same time it has acknowledged that as a state it has no right to interfere with God's worship. It decrees its own incapacity and precisely acknowledges that its citizens have rights in another sphere which it may not touch. The United States has through its state constitutions repudiated a union of the state with protestantism, not so much possibly from conviction as through policy. But the United States of America seems to admit at least a logical union between the true church and the state, even though, like the Athenians worshipping the unknown God, it pays only indirect homage to the church to whom God has committed the protection and guidance of these unalienable rights of life, liberty and religion which the state has confessed. It leaves the church of God entirely free to claim, show and use jurisdiction in the higher order of right and duty, and to proclaim to all citizens the revelation of God, and the means instituted by the Savior to bring mankind to heaven. But nowhere in the United States to-day does the state repudiate the church of God; nowhere does it decree or announce its separation therefrom, for, inability to establish the church does not decree separation from it; nowhere does it claim jurisdiction over it or in the supernatural order.

On the contrary, not only does it not claim authority in the sphere of the supernatural and over the unalienable rights of man, but it emphatically admits a distinction between the two jurisdictions, between the temporal and the spiritual, between the state

and the church. It attempts to swallow neither the individual man, nor the church of God.

In America the state goes further than a mere logical or theoretical acknowledgment. It actually protects the church in the fulfilment of her divine mission. No man or body of men can interfere with her teaching or her worship. She makes her own laws and enforces her own discipline. In this she is not only tolerated by the state but protected. She admits citizens of all classes to membership and there is none to stop her action. She excommunicates from her fold and the state not only will not put back the recalcitrant member, but rather if obstreperous will keep him out by virtue of its police power and because the state in its decisions on church discipline follows the decision of the church court which has judged the matter.

The state in America has not attempted to define or limit the spiritual order. Therefore it has never attempted to interrupt the spiritual intercourse between the divinely constituted head of the church and the members who may be its citizens. Such intercourse is admitted to be outside its capacity to judge, outside its authority to interfere.

The properly constituted ecclesiastical authorities by the laws of the various states may hold the title of real estate for the use of the church; and property used for religious purposes is usually not subject to taxation. It is entirely safe from confiscation and the state makes no claim thereon. The bishops and clergy are not considered a body at variance with the state, but on the contrary are protected in all their rights as citizens. There is no need of a concordat with America, for the church is not asked to

give up any rights. She is left throughout the land in the full enjoyment of all rights given by her divine founder. Her bishops are appointed without an exequatur from the state, her clergy put in charge of parishes without interference. She is supported by her children so bounteously that the present gloriously reigning Pontiff in his letter of September 18th, 1899, addressed to the Brazilian bishops, cites this support as an example to be imitated in their nation.

The United States is ruled by law not by the will of any individual. The constitution adopted for the United States and the constitutions of the various states govern respectively the acts of congress and of the legislatures. The supreme court in contested cases decides whether an act of congress or of the legislature is constitutional. If against the constitution the act fails of effect. The president of the nation and the governors of the states do but execute, not make, the laws.

The present condition of the church before the law in America is as stable as the constitutions of the various states. When the people of a state vote a revision of its constitution the church will adapt itself to the new order. The trend of men's thoughts is happily not against the church; and, except an occasional attack on secondary lines, she has little to fear from the American public. With the march of events continuing in the coming century as in the one now past, an explicit union of America with the church seems more likely than a reversion to former legal persecution. The church in the United States in the century just closed has made greater progress than in any country of the world.

Besides the church there are and always have been numerous sects of protestantism in the United States. The church has more members than any one of them, but together they far exceed her numbers. To prevent endless confusion and continual strife the various states in their constitutions have adopted the provision that all religious bodies shall be considered equal before the law, inasmuch as all are protected from interference and all are accorded equal privileges, no preference being given to any. No sect of protestantism therefore receives stability from the state, but each is allowed to develop its logical tendency, which is disintegration. More than one hundred and fifty sects are now in existence in the United States, logically through remotely preparing the way for increased accessions to the catholic church wherever, by comparison, the strength and beauty of her divinely constituted authority become better known and appreciated.

Meantime various questions arise which sometimes are difficult of solution and require sacrifices, not of principle but of worldly goods, on the part of catholics. Chief among these is the question of schools and education. In this and similar practical matters the courts have found it difficult to harmonize theory and practice. Shall all be assessed to support state schools or may some funds be converted to the benefit of separate schools? Shall the bible be read in school or shall the reading of it be prohibited? Shall religion at least in its first principles be taught therein or must it be excluded? May not the ordinary principles of morality be taught in state schools, or does such teaching necessarily imply the teaching of religion? Such questions have been variously de-

cided by courts and sometimes left to the vote of those interested. If this solution is against the catholic conscience, worldly sacrifices must for a time ensue.

The fact, however, that all religious bodies are held equal before the law cannot but cause the thoughtless to consider them equal also before God. The natural tendency in such circumstances is towards indifferentism. Even the catholic, unless careful of first principles, is liable to participate in religious services with those not of the household of faith.

There have been losses from the church in America, and these have not been confined to any nationality. Some, accustomed to oppression, have run wild under the rule of personal liberty; others, like God's people of old, have been tempted by the flesh-pots of Egypt. Overcrowding in large cities where surroundings are detrimental, and settling in places distant from a catholic church where children cannot acquire the practice of religion, have proved occasions of heavy losses. But the idea that one religion is as good as another, and the desire to reciprocate the good things said and done for the church, have led many to associate with non-catholics not only in business and society but also in marriage and religion. Such association, unless catholics are careful and well instructed, often leads to loss of faith in whole families. Constant vigilance is as necessary for preserving faith as for guarding liberty.

Despite the sad losses, there has been a great and constant increase in membership throughout each decade of the century just passed. One hundred years ago there was one bishop, twenty priests and

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about twenty-five thousand catholics in the United States. To-day there is an Apostolic Delegation, fourteen archbishops, one of whom is a cardinal, and seventy-one bishops of residential sees, (besides nine titular bishops), over eleven thousand five hundred priests and about thirteen million catholics. These figures do not include America's new possessions in Hawaii, Cuba, Puerto Rico and the Philippines, in which there are fully eight million catholics.

Conditions are such in America that not only the clergy, but also members of the laity are obliged at times "to give a reason for the faith which is in them." Therefore is it that bishops, priests and people have nobly joined in efforts for thorough education. Parish schools have been built in many places, academies and colleges provided, seminaries founded and generously supported, pontifical universities opened for the higher and broader education of both the laity and the clergy.

The question may be asked, Should the American system of government be adopted in older and younger countries? If an answer may be ventured, it is one of warning. First be sure you are right before going ahead. The American system may not be good for every nation. Our people is eminently cosmopolitan, one characteristic nicely balancing the other, all under the guidance of cool, practical common sense. There are certain endowments of mind which belong to the American people just as other characteristics belong to various other nations. Our present system of government is a development, the outcome of circumstances. It is an established fact, and, as the great Leo XIII says, "to this American political condition and the laws and customs by which

we are governed there is no reason to take exception." Not that the Holy Father meant thereby to approve of each law enacted in America, but that the system itself known as political Americanism is considered good for us not only in the sight of men but also in the sight of God. As time goes on and the action of the church becomes more potent, individual laws to which exception may now be taken, undoubtedly will be repealed or modified. Great is the influence of the supernatural over the natural. Blessed is the action of the church upon society. American catholics firmly believe that as they become worthier members of the church of God, so do they become also better citizens of their well-beloved United States of America.

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